§ 6.—*Impounding Unstamped Documents.*

It must be remembered that the law (section 33) imposes on every person in charge of a *public* office (except a Police officer) the duty of "impounding" any instrument which, in his opinion, ought to bear a stamp, and which is "produced or comes" before him in the performance of his official functions.

I think there is no doubt that a forest officer who has a public office is within the meaning of this section: but in any case of doubt it rests with the Local Government to determine who, for the purposes of this section, is deemed to be "in charge of a public office."

The officer in charge has to send the offending instrument to the Collector *in original*, under section 36; the Collector does all the rest.

SECTION II.—REGISTRATION.

§ 1.—*Principle of the Law.*

The Registration Act is No. III of 1877. The general principle is that some documents *may* be registered, others *must*.

The latter are specified in section 17, the former in 18.

It will be observed that the Registration Act has nothing to do with the question whether there *must be a writing or document at all.*

We have seen that, under the Contract law, no contract need be in writing unless there is some express provision of law that it is so. And I am not aware of any *law* which prescribes that any contract, likely to be within a forest officer's business, *must* be in writing[2]; except sales and mortgages of land or houses under certain circumstances.

The Registration Act is only concerned with the fact that *if* there is a document, then that document *must* be registered in

[2] As I before remarked (but it is often useful to repeat things) Government or the Conservator may of course make it a rule of practice that contracts are to be in writing, but that would have nothing to do with the actual *legal validity* of the contract.

certain cases, and *may* be registered in certain others; and that in either case certain legal effects follow from registration or non-registration of documents that *must* be registered as described in section 17 will be found all of them to relate to *immovable* property—to gifts or sales or leases or the creation or extinction of some interest in immovable property, or to the acknowledging of payment of consideration in respect of such transactions.

§ 2.—*Government Deeds exempt.*

These provisions do not apply to Government deeds. Any grant of immovable property by *Government* is exempt. No documents made to be put on the record of local revenue settlements or local survey, nor documents filed periodically by patwáris, &c., in Revenue offices, nor sanads or documents evidencing grants or assignments of land or interest in it by Government, require registration. (Section 90.) In many cases, however, for greater security, registration of a contract is thought desirable. I shall simply describe the leading provisions of the law which will require attention.

§ 3.—*Effects of Registration.*

And first I may mention—

That no registration gives any effect to a fraudulent or collusive document, nor will it make binding a contract which is void or voidable (except in the case of a contract without consideration).

That the registration does not afford *conclusive* proof of execution.

Nor of receipt of consideration, even though this is stated before the Registering officer to be a fact; but the strongest proof would be required to contradict the evidence afforded by this fact.

A document (not being a will) if duly registered and relating to any property, movable or immovable, will take effect against any oral agreement or declaration regarding such property, but *not* where there has been an *oral agreement accompanied* or *followed* by *actual*

delivery of possession. (Section 48[3].) But documents under section 17 (clauses *a, b, c, d,*) and section 18 (clauses *a, b,*) *if registered* have priority over unregistered documents (not being decrees or orders of Court) relating to the same property. (Section 50.) If a document exists, and ought to have been registered under section 17, it is not only no evidence in a Civil Court, but has no effect on the rights in the property whatever. (Section 49.) This does not apply to documents of this kind granted by Government. (Section 90.)

§ 4.—*Rules for describing Property.*

Care must be taken that where any houses or lands are dealt with in a document, the terms of section 21 as regards description, specification of position and boundaries, are attended to. Whenever forest officers have occasion to execute or be parties to security or other bonds dealing with land or house property (though I strongly recommend them to avoid having anything to do with land and houses as security), these conditions must be carefully looked to.

§ 5.—*Method of Registration.*

Deeds presented for registration are copied by the Registration office into books, and the deed is left (a receipt being given for it (section 52) for the purpose. Afterwards the deed is returned with a receipt for the *fees*. The office does not, however, copy plans or maps. When therefore a deed is accompanied by such, two copies should be prepared, one to be attached to the deed, the other to *be left in* the Registration office.

§ 6.—*Erasures and Alterations.*

Erasures and interlineations may give ground for a refusal to register unless attested by initials of the person executing the document. (See section 20.)

§ 7.—*Time for Registration.*

Documents to be registered should be presented within *four months*

[3] Section 48 has been modified in effect, in provinces where the Transfer of Property Act is in force (North-Western Provinces and Bengal and Central Provinces for example). There cannot be an oral sale and mortgage in some cases. See Act, sections 54, 59.

from date of execution. (Section 23.) After that, registration may be allowed, within another four months (on payment of a heavy penalty) in cases where necessity or unavoidable accident are shown to have prevented the registration.

§ 8.—*Place.*

The proper office is the office of the Sub-registrar, within whose sub-district the whole or part of the property is situate (section 28); or if there is no property in question, at the office of the sub-district within which the document was executed, or in which *all* the parties agree to have it registered. (Section 29.) It is in the discretion of a *Registrar* to register a document that might have been registered by the Sub-registrar. (Section 30.) A Registrar of a district, including a Presidency town, and the Registrar of Lahore, can register without respect to the place where the property is, as long as it is in British India. If it is necessary to register a deed relating to property in one district, and neither party is there, they can execute a *special* "power of attorney to register" (section 33) before the Sub-registrar in whose jurisdiction they reside, and then send the agent so appointed to register for them.

The provisions about appearance, or a special agent for a person who cannot appear in person, do not apply (section 88) to "any officer of Government in any proceeding connected with the registration of any instrument executed by him in his official capacity," nor need he endorse the document as executant under section 58.

All the Registering officer has to do is to satisfy himself that the execution by the Government Officer is a fact, for which purpose he may refer to the officer or to any Secretary to Government, &c.

§ 9.—*Persons presenting.*

Ordinarily (section 32), the person *executing*, or the person *claiming under* a document (or his representative or assign, if he is dead or bankrupt), or an agent (holding *a special power of attorney to register*, attested before the Sub-registrar of the place where the principal resides (section 33) may present a document for registration.

§ 10.—*Procedure.*

The form of registration and endorsement is given in sections 51-6. The fees are regulated by rules issued by the Local Government.

The section 71 *et seq.* deal with cases in which the Sub-registrar may refuse to register, and the appeal there is from his order refusing. No such appeal lies where he refuses because execution is denied. (Section 72). In this case there is a special proceeding before the Registrar to enquire into the fact (sections 73-5), and the ultimate remedy, if the Registrar does not order registration, is (under section 77) to file a civil suit for a decree ordering registration.

I may mention that if any money is paid, or goods delivered, in the presence of the Sub-registrar, or an admission made in his presence that the money has been paid, this is recorded[4].

The endorsement of registration is to be both signed and stamped with the official seal of the registering officer. (Section 60.)

The books kept by Registering officers are known as No. 1 and No. 2[5], and the indexes of No. 1 are open to search or inspection on payment of prescribed fees. (Section 57.)

[4] But is not *conclusive*. Nor is it *conclusive* that the admission of receipt is recorded in the deed itself.

[5] No. 1 contains copies of all documents registered not being wills or authorities to adopt; No. 2, record of reasons for refusal to register.

CHAPTER XXII.

CIVIL PROCEDURE.

Under the present Forest law, Forest Officers will have much less chance of having to bring or defend suits in the Civil Court than formerly.

There were in early days many sums due on sales of forest produce which could only be recovered by civil suits: but now all money payable under the Forest Act or Rules can be recovered (section 81, Forest Act) without a suit, as an arrear of land revenue through the Collector.

Moreover most forest produce is paid for at the time, and if not, under section 82 the price of it is a first charge on the produce which may be taken charge of by a forest officer, and ultimately sold, if need be to realise the sum due.

Nor is a forest officer liable to a civil suit for anything done by him under the Act. (Section 73.) If such a suit is brought this section would be a good defence[1].

Still there may be public suits in which a forest officer may be interested. There may, for example, be disputes about Government contracts, which have to be referred to arbitration or settled in Court. Claims may be brought against Government for land, as in the well known "North Kanara case." And it is possible that in matters of lesser importance, where the Government advocates cannot be employed, or there is no Government pleader, a Forest officer may have to appear on behalf of the Department himself. But even where this is not so, he may have to prepare cases and advise the law officers, so that an elementary acquaintance with the general features of civil procedure may be useful to him.

[1] See Chapter XIX on the legal position of Forest Officers.